

ONTARIO COURT OF JUSTICE

B E T W E E N :

Her Majesty The Queen

— AND —

Pietro Dattomo

Before Justice of the Peace Kenneth W. Dechert
Heard on July 3, 2009
Reasons for Judgment released on October 30, 2009
Provincial Offences Court – Burlington, Ontario

A. Senkus for the prosecution
A. El Hakim representative for the defendant

Statutes, Regulations and Rules cited:

Highway Traffic Act, R.S.O. 1990, c. H.8, as amended, s.s. 1(1), 128(1) (a), (b), (d), 128(2).

Cases cited:

D'Astous v. Baie Comeau, (1992) 74 C.C.C. (3d) 73 (Que. C.A.);
Regina v. Bland, (1974) 20 C.C.C. (2d) 332 (Ont. C.A.);
Regina v. Chow, (1991) 68 C.C.C. (3d) 190 (Alta. C.A.);
Regina v. Morin, [1988] 2 S.C.R. 345 (S.C.C.);
Regina v. Vancrey, [2000] O.J. No. 3033 (Ont. C.A.);
Regina v. W.(D.), [1991] 1 S.C.R. 742 (S.C.C.);
Regina v. Werenka, (1981) 11 M.V.R. 280 (Alta. Q.B.);
Regina v. Williams, 2008 CarswellOnt 1504 (Ont. C.J.).

K.W. DECHERT, J.P. (orally):

INTRODUCTION

[1] Under Certificate of Offence 1260-95132522, the defendant, Pietro Dattomo stands charged that he on the 22nd day of February, 2009 at 2:05 a.m., at “1200 Block Speers Road”, in the Town of Oakville, did commit the offence of “speeding-70 kilometres per hour in a 60 kilometre per hour zone”, contrary to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, section 128.

[2] The trial of this charge commenced before me on the 3rd day of July, 2009, at which time the defendant entered a plea of not guilty to the subject charge. The trial was completed on that date and the matter was then adjourned to October 30, 2009, for my judgment.

[3] The prosecution (the City of Burlington) was represented by Ms. A. Senkus. The defendant was represented by his legal representative, Mr. A. El Hakim.

RELEVANT STATUTORY PROVISIONS

[4] The defendant is charged with “speeding” under section 128 of the *Highway Traffic Act*. The relevant portions of that section read as follows:

s.s. 128(1) No person shall drive a motor vehicle at a rate of speed greater than,

(a) 50 kilometres per hour on a highway within a local municipality or within a built-up area;

(b) despite clause (a), 80 kilometres per hour on a highway, not within a built-up area, that is within a local municipality that had the status of a township on December 31, 2002 and, but for the enactment of the *Municipal Act, 2001*, would have had the status of a township on January 1, 2003, if the municipality is prescribed by regulation;

...

(d) the rate of speed prescribed for motor vehicles on a highway in accordance with subsection (2), (5), (6), (6.1) or (7);

...

s.s. 128(2) The council of a municipality may, for motor vehicles driven on a highway or portion of a highway under its jurisdiction, by by-law prescribe a rate of speed different from the rate set out in subsection (1) that is not greater than 100 kilometres per hour and may prescribe different rates of speed for different times of day.

[5] The terms “highway” and “motor vehicle” are defined in subsection 1(1) of the *Highway Traffic Act*, as follows:

“highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“motor vehicle” includes an automobile, motorcycle, motor assisted bicycle unless

otherwise indicated in this Act, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of this Act.

THE EVIDENCE

[6] During the trial proceedings of July 3rd, 2009, the Court received *viva voce* evidence from Police Officer Gerry Prevost, of the Halton Regional Police Service, tendered on behalf of the prosecution. The defendant did not call any evidence on his own behalf.

[7] During examination-in-chief, Officer Prevost testified that on the 22nd day of February, 2009, he was operating a marked police vehicle in the Town of Oakville. He stated that on that date, in the early hours of the morning, he was conducting speed timing exercises in the 1200 Block area of Speers Road, in the Town of Oakville. He advised that Speers Road is a four lane highway with two lanes for eastbound traffic and two lanes for westbound traffic. He noted that the relevant area of Speers Road was predominantly a commercial area.

[8] During cross-examination, Officer Prevost testified that at the material time, he was parked in a private drive, such that he was located approximately 20 metres south of the south shoulder of Speers Road, facing in a northerly direction. He indicated that he was parked perpendicular to the said highway and had “a clear view of both eastbound and westbound lanes”.

[9] During his testimony-in-chief, Officer Prevost stated that in the course of conducting speed timing exercises at the relevant time, he was using a hand-held speed measuring device known as “Genesis VP Directional radar”, bearing serial number 03262. The officer advised that the purpose of the radar device that he was using was “to verify the speed of a moving motor vehicle”.

[10] Officer Prevost testified that on February 22nd, 2009 at 2:05 a.m., he had occasion to observe a motor vehicle travelling in a westerly direction in the curb lane of Speers Road, approaching his location in the 1200 Block. The officer stated that the said motor vehicle appeared to be travelling at a greater rate of speed than the posted speed limit for the highway, being 60 kilometres per hour.

[11] Officer Prevost testified that upon making the observation of this motor vehicle, he pointed his radar device through the open passenger window of his police vehicle at the subject vehicle and depressed its trigger. He stated that at that point in time the “display” screen of the device indicated that the vehicle was travelling at a rate of speed of 77 kilometres per hour. The officer advised that the corresponding tone on the radar device confirmed the constant speed of the vehicle. He advised that he then “locked in the radar” by double clicking the trigger, such that the display-screen showed a rate of speed for the subject motor vehicle of 75 kilometres per hour. He noted that at the time that he activated

his radar device and obtained the subject rate of speed measurement for the targeted vehicle, there was no other traffic near the said vehicle.

[12] Officer Prevost testified that upon obtaining the “locked-in” speed reading for the subject motor vehicle, he pursued the vehicle, activating his emergency lights and stopping the vehicle, being a 2007, white-coloured Ford pick-up truck, on Speers Road, just east of Third Line. He stated that he had a “clear, unobstructed view” of the said pick-up truck from the time that he first observed it until the time that he stopped it. Furthermore, he indicated that he never lost sight of the said vehicle from the time that he first observed it until he stopped it.

[13] Officer Prevost testified that upon stopping the said pick-up truck, he approached the driver of the truck and obtained a valid Ontario driver’s licence from him. The officer stated that he was able to ascertain the identity of the driver, being the defendant, Pietro Dattomo, by means of the driver’s licence produced. He advised that he then issued a provincial offence notice to the defendant for the “reduced offence” of speeding - 70 kilometres per hour in a 60 kilometre per hour zone, under section 128 of the *Highway Traffic Act*.

[14] During examination-in-chief, Officer Prevost testified that he was a qualified radar operator at the relevant time as he had been re-qualified in February 2008. In that regard, he stated that he had been initially qualified in the operation of radar in 1975, and had been re-qualified in 1995 and in 2006, prior to his most recent re-qualification in February 2008. He advised that he had received training in the operation of radar as a speed measuring device.

[15] During cross-examination, Officer Prevost testified that in 1975, he received training in the operation of a radar device, but not in respect of the “Genesis VP Directional” hand-held radar device that he was using on February 22nd, 2009. The officer stated that he received training in respect of this device, for the first time, in February 2008. He went on to advise that the said hand-held radar device was “fairly new” to him and to the police service.

[16] During examination-in-chief, Officer Prevost testified that he tested the subject hand-held radar device before and after using it at 2:05 a.m. on February 22nd, 2009. In particular, the officer stated that he tested the radar unit at 1:30 a.m. on the said date, “according to manufacturer’s instructions”, noting that the unit “passed”. Additionally, he advised that he “re-tested” the radar device at 2:20 a.m. on the same day, “following recommended procedures” and found that the unit “was operating within manufacturer’s specifications”, noting that “it was in good working order”.

[17] During his testimony-in-chief, Officer Prevost testified that prior to using the radar device to measure the speed of the defendant’s motor vehicle in addition to his efforts in testing the unit, he conducted both an interior and exterior “sweep” of his police vehicle. He stated that he conducted the interior “sweep” in order to check for any interference from within his vehicle which might affect the speed readings. He performed the “sweep” of the exterior of his vehicle to check for any interference from “lighting in the area” which might affect the speed readings. The officer testified that he did not note any interference with the

radar unit, as a result of the “sweep” tests which he conducted.

[18] During cross-examination Officer Prevost testified that at the relevant time he tested the subject radar unit according to procedures recommended to him by the radar trainer and the manufacturer. When asked how the manufacturer would tell him, the user, how to test the unit, Officer Prevost responded “as passed on by the instructor”. Furthermore, in cross-examination, the officer was unable to name the manufacturer of the subject radar device.

[19] During re-examination, Officer Prevost testified that in the course of his training with respect to the radar device, he had reviewed the manufacturer’s instructional manual for the device. He stated that the manufacturer’s manual for the subject radar unit contained “recommended testing procedures” and that the tests that he had conducted in connection with his use of the device on the subject date, were tests made in accordance with the training he had received, utilizing the said manual.

[20] During cross-examination, Officer Prevost proffered detailed testimony as to the tests that he conducted in accordance with the manufacturer’s instructions. In that regard, he testified, in part, as follows:

I make the following tests. I verify that the radar itself is not cracked or damaged. I then turn on the radar unit with a power button on the control head. I make observations of the display, that the numbers displayed are complete and that a tone is emitted from the radar. I then press the test button on the radar which then prompts the radar to commence a self test. Once the radar goes through a self test, it then displays and in this case a pass – the word “Pass”. I then select the mode switch and set the following on radar.

[21] Officer Prevost stated that the unit has three modes, “towards, away and towards and away”. He noted that on the date in question, he selected the “towards” mode.

[22] The officer stated that after setting the directional mode during the testing procedures, he selected the “sensitivity mode”, noting that the sensitivity of the unit ranges from one to five. He indicated that he had it set at five. He advised that a setting of five means that the radar “goes out to infinity”.

[23] In this regard, Officer Prevost testified that one would set the sensitivity mode of the radar device at five, when one was using the radar for greater distances rather than in a confined space or a small area. He advised that one would select the maximum sensitivity mode (five) when using the radar over a distance of a couple of blocks.

[24] In completing his testimony as to the steps he took in testing the radar unit, Officer Prevost stated as follows:

The next setting I set was the volume setting. The range is zero to six and I had the volume set at six. The next setting is backlight on or off. With the – I had the settings set at on, which backlights the – backlights the display, so that it’s visible in low light.

[25] Officer Prevost testified that at the relevant time, after conducting his initial testing of the radar unit, he conducted an interior sweep of his police vehicle. He advised that in conducting this test, he pointed the radar in the on position at any potential source of interference, such as the inboard computer or the dash or heating vents in the automobile, and then activated the radar to determine the possibility of interior interference with the radar beam.

[26] In further describing the steps that he took relative to the interior sweep test, Officer Prevost testified that in conducting the test he set the device in the “towards mode” and he set the sensitivity to the maximum level of five. In this regard, he acknowledged that in conducting this test the machine was set for long distances, even though he was activating the device within the police vehicle, a confined area. Officer Prevost testified that in conducting the interior sweep test at the material time, he did not receive any reading on the radar unit.

[27] Furthermore, Officer Prevost testified that at the relevant time, he also conducted an exterior interference “sweep”, outside of his police vehicle. He advised that in conducting this test he used the same methodology as he did in conducting the interior sweep test, noting that during the test he had the sensitivity mode for the unit set at the maximum level of five. He stated that upon completing this test he did not receive any readings on the unit, consistent with the results of the interior sweep test.

[28] In concluding his testimony during cross-examination, Officer Prevost agreed with the suggestion posed to him by the defendant’s representative that the subject radar device obtained a measurement of the speed of the vehicle which he had observed travelling westbound on Speers Road. In briefly describing how the device was able to measure the speed of the vehicle, the officer stated:

It sends out a signal which then bounces off a moving object and the difference between the moving object and the closing speed is recorded and comes up as a number.

[29] When asked by the defendant’s representative if he would agree with the suggestion that any interference in the area might disrupt the speed reading he receives, Officer Prevost replied “theoretically, yes”.

THE ISSUES

[30] The ultimate issue in this proceeding is whether or not the prosecution has proven the guilt of the defendant on the subject charge, beyond a reasonable doubt. In resolving this issue, I am obliged to apply the three-pronged test as set out in *Regina v. W.(D.)*, [1991] 1 S.C.R. 742 (S.C.C.). In the matter before me, the only evidence which I have received is the testimony of Police Officer Gerry Prevost, tendered on behalf of the prosecution. Accordingly, I need only consider the third prong of the *W.(D.)* test, which directs me to consider whether, on the basis of the evidence that I accept, I am convinced beyond a reasonable doubt of the guilt of the accused.

[31] The offence of “speeding”, under section 128 of the *Highway Traffic Act* is an absolute liability offence. Accordingly, in order to sustain a conviction on the subject charge, the prosecution must prove all of the elements of the *actus reus* of the offence against the defendant, beyond a reasonable doubt. The essential elements of the offence of speeding are as stated in the case of *Regina v. Williams*, 2008 CarswellOnt. 1504 (Ont. C.J.), the date of the offence, the place of the offence, the posted speed limit, the identification of the operator of the subject motor vehicle and the rate of speed of the motor vehicle.

[32] In determining whether the prosecution has proven the element of the rate of speed of the motor vehicle in this proceeding, I must consider whether the prosecution has established the accuracy and reliability of the radar device operated by Officer Prevost at the material time. The accuracy and reliability of the device must be established beyond a reasonable doubt, based on the totality of the evidence before the Court. If the prosecution succeeds in proving this issue, I may then take judicial notice of the accuracy of the speed measurement obtained by means of the said radar instrument.

RELEVANT COMMON LAW

[33] In its decision in *Regina v. Vancrey*, [2000] O.J. No. 3033 (Ont. C.A.), the Ontario Court of Appeal appeared to approve the decision of the Quebec Court of Appeal in *D’Astous v. Baie Comeau*, (1992) 74 C.C.C. (3d) 73 (Que. C.A.), in respect of the issue of the evidentiary basis necessary for a conviction for speeding based on a radar reading. In her decision in *Vancrey*, Feldman, J.A. stated, in part, as follows:

... In that case [*D’Astous v. Baie Comeau*, supra.] the court held that judicial notice could be taken of the fact that radar is used to measure the speed of automobiles and that the principle upon which it is based can be found in any encyclopedia. However, in each case, the crown must still prove that the particular radar device was operated accurately at the time. To do that the Crown must show:

- The operator was qualified: he followed a course, he passed an exam, he has several months’ experience;
- The device was tested before and after the operation;
- The device was accurate as verified by a test and that the tuning fork used was accurate. Once evidence is led to demonstrate those facts, then the radar reading becomes *prima facie* evidence of the speed of the vehicle, subject to evidence to the contrary, if any.

[34] In considering the issue of the evidentiary basis necessary for a conviction for the offence of speeding based on a speed measurement obtained by a laser device, Madam Justice Feldman made the following comments at paragraphs 21 and 22 of her decision:

...

The Crown seeks to uphold the conviction on the basis that there was led at trial *prima facie* evidence of the accuracy and reliability of the particular laser unit, consisting of the performance of the manufacturer’s tests for good working order both before and after the use of the device, together with the earlier verification of the accuracy of the laser unit for measuring the velocity of moving vehicles on a

highway, when compared with an accurate radar unit by a qualified laser and radar operator.

In my view, the position of the Crown is correct. The court received evidence that the officer who operated the laser device was trained and experienced and that he tested the device both before and after its use in accordance with the manufacturer's instructions to ensure that it was operating properly on the date in question. The court also received evidence of the accuracy of the device for measuring the speed of vehicles on a highway by comparing its readings with those of an accurate radar unit. The radar test provides the independent guarantee of the accuracy of the particular laser unit to measure the speed of a moving vehicle.

...

[35] It would appear, therefore, that in considering the issue of the accuracy and reliability of a radar speed-measuring device, the Ontario Court of Appeal established the principle that the device must be tested both before and after its use in accordance with the manufacturer's testing requirements for good working order.

[36] In the Ontario Court of Justice, Provincial Offences Appeal Court decision in *Regina v. Williams, supra.*, Pockele J. made, in part, the following comments pertaining to the issue of the essential elements of the offence of speeding:

...

... The only "essential elements of the offence" in a speeding charge are the date, place, posted speed, identification of the vehicle operator, and the speed of the motor vehicle. *The Highway Traffic Act* leaves it open to the prosecution as to how the rate of speed is established in court. There are many different ways to establish excessive speed such as – and this is not meant to be an exhaustive list – pacing a vehicle, mechanical road cables, aerial observation, radar, laser, etc. Whatever method is employed by the prosecution, the burden is upon the prosecution to establish the rate of speed beyond a reasonable doubt after the evidence has been fully challenged. In *R. v. Bland*, [(1974), 20 C.C.C. (2d) 332 (Ont. C.A.)] speed based on speedometer readings, *R. v. Chow*, [(1991), 68 C.C.C. (3d) 190 (Alta. C.A.)] radar photography device where the Court held:

The evidence must meet the test of demonstrating a circumstantial guarantee of trustworthiness and accuracy and that without any evidence to the contrary, the evidence was admissible and was entitled to weight.

In the case of *D'Astous v. Baie Comeau* (Que. C.A.) [*supra.*], the Court primarily dealt with the issue of judicial notice regarding the operation of radar speed detection devices. As a secondary point, the accuracy of such a device is not to be "presumed" but rather must be "proven" and as part of this, the prosecution must prove the qualification of the operator that the device was tested before and after operation and that the accuracy of the device was verified by a test. Specifically in this regard, the testing process must conform with the operator's manual, and if a tuning fork is involved, it must be proven to be accurate. This differs from the case at hand because the operator's manual, or the new suggested testing procedure no longer requires the use of a tuning fork. *Baie Comeau* does not stand for the proposition that it is an essential element of the offence to test every speed detection device with a tuning fork, particularly where it is not deemed necessary by the manufacturer and there is no evidence before the court casting any doubt

upon the *prima facie* accuracy of the speed detection device.

It is not an essential element of the offence that the officer who observed a speeding offence and write the ticket be “qualified” in any particular manner according to Ontario law; however it would appear that in the Alberta [case of] *R. v. Werenka*, [(1981), 11 M.V.R. 280 (Alta. Q.B.)] the Crown is required to prove that the operator of a speed detection device is qualified by virtue of (i) following a course, (ii) passing an exam successfully, (iii) having several months of required experience. It would appear that the issue of being “qualified” in Ontario must be proven beyond a reasonable doubt on a standard less defined than it is in Alberta.

However, a “reasonable doubt” might be raised regarding the accuracy of a speed measurement where an operator is not qualified or has no experience or has no training in the operation of a speed measurement device or system. Similarly, where a mechanical speed detection device is utilized, the prosecution may wish to call evidence, although it is not necessary to do so, that the device has been properly maintained and tested prior to operation. Certainly, these questions would be asked by the defence if not explored by the prosecution, the defence attempting to raise a “reasonable doubt” as to the accuracy of the rate of speed indicated.

There is no requirement in the *Highway Traffic Act* that the operator of a speed detection device achieves a certain level of qualification as a prerequisite to accepting the operator’s evidence of the rate of speed; the fact that an operator received no training whatsoever, or received training deemed appropriate by his superiors, this may be qualification, or was relatively inexperienced although properly trained and qualified, are all factors which the Judge or Justice of the Peace can take into consideration when weighing the evidence to establish whether the rate of speed has been established beyond a reasonable doubt. It is important to remember that the weighing or assessing of the evidence must not be done on a piecemeal basis and must only be done having regard to all of the evidence before the Court. This is *R. v. Morin* [[1988] 2 S.C.R. 345 (S.C.C.)] in [the] Supreme Court. It is also important to remember that contradictory evidence is one of the most important factors to consider in weighing evidence.

...

ANALYSIS

[37] The only evidence proffered in this proceeding was the testimony of Police Officer Gerry Prevost. He testified in a clear and responsive manner, with the assistance of his investigative notes to refresh his memory. His testimony was both detailed and internally consistent. The strength of his evidence was not significantly diminished through cross-examination. I found him to be a credible witness.

[38] In my view, the following elements of the subject offence have been established by the undisputed evidence, beyond a reasonable doubt:

- (i) that on the 22nd day of February, 2009, the defendant Pietro Dattomo was driving a pick-up truck, (a “motor vehicle” within the meaning of the *Highway Traffic Act*), on Speers Road, (a “highway” within the meaning of the *Highway Traffic Act*), in the Town of Oakville;

- (ii) that at that time, the said pick-up truck was being driven by the defendant in a westerly direction, in the curb lane of Speers Road, in a posted 60 kilometre per hour speed zone.

[39] I must now determine whether the prosecution has proven the remaining element of the offence, being the issue of the rate of speed of the subject motor vehicle at the material time.

[40] The evidence before me establishes that the speed of the pick-up truck at the relevant time was determined by means of the radar speed measuring device being operated by Officer Prevost at the time.

[41] The officer testified that at approximately 2:05 a.m. on February 22, 2009, he observed the subject pick-up truck travelling in the curb lane of Speers Road, at a speed which he estimated to be in excess of the 60 kilometre per hour speed limit for the said highway. The officer testified that he then pointed the “Genesis VP Directional” radar device that he was operating at the time, at the pick-up truck and obtained a “locked-in” speed for the truck of 75 kilometres per hour. These facts have been established through the undisputed evidence, beyond a reasonable doubt.

[42] However, in order to be able to take judicial notice of the accuracy of the said radar device, and thereby accept the evidence of the speed measurement relative to the said pick-up truck, I must be satisfied, beyond a reasonable doubt, that the device was both operating and being operated properly at the material time.

[43] I have received evidence that at the time of the offence, Officer Prevost was trained and qualified in the operation of the “Genesis VP Directional” radar speed measuring device, having received training on that device in February 2008. There is no evidence before me which contradicts the officer’s testimony in respect of his qualifications relative to the said radar device.

[44] I have received evidence that Officer Prevost tested the subject radar unit both before and after its use at approximately 2:05 a.m. on the offence date. In particular, Officer Prevost testified that he tested the unit at 1:30 a.m., “according to manufacturer’s instructions”, determining that the unit “passed”. From this testimony, I am able to reasonably infer that the device was in good working order prior to its use at approximately 2:05 a.m.

[45] Furthermore, Officer Prevost testified that he re-tested the radar device at 2:20 a.m., “by following recommended procedures” and as a result of that test reached the conclusion that the device was in good working order and was operating “within manufacturer’s specifications”.

[46] Based on the officer’s evidence as to his training and qualifications pertaining to the radar speed measuring device, and based on his evidence as to the steps he took to test the particular radar unit, I am satisfied, beyond a reasonable doubt that the device was working properly at the time that it was operated and that it was properly operated by the

Officer in obtaining the speed measurement for the pick-up truck.

[47] While I acknowledge the officer's testimony during cross-examination, that he became aware of the recommended testing procedures for the radar device from both his "radar trainer" and the manufacturer, it is noted that he clarified this statement during re-examination. During that portion of his testimony, he stated that he reviewed the manufacturer's instructional manual, which contained recommended testing procedures, as part of his training on the radar device.

[48] The officer testified that prior to using the radar device at the relevant time, he conducted an "interference sweep" both inside and outside of his police vehicle, in order to check for any sources of interference which might "disrupt" the speed reading received by the radar device. He testified that as a result of performing these tests he was satisfied that there were no sources of interference to the radar signal at the time that he activated the device at approximately 2:05 a.m. on the relevant date.

[49] During his submissions, the defendant's representative argued that Officer Prevost's description of the procedure he employed in conducting the interior interference test, should raise a reasonable doubt in my mind as to the accuracy of the speed determination in this case, obtained through the activation of the radar unit at the relevant time.

[50] Mr. El Hakim submits that the interior interference test was flawed as the officer had set the sensitivity mode for the radar device at its highest level when conducting the test. The defendant's representative argued that it did not appear to make common sense to perform the test while the sensitivity mode for the unit was set at a level designed for long distance radar measurement. He contended that if the interior interference test was not conducted properly, then it was conceivable that there was some interference in the area of the police vehicle at the time that the device was activated. Mr. El Hakim submitted that any such interference might have affected the accuracy of the speed reading of the vehicle driven by the defendant at the relevant time.

[51] In considering Mr. El Hakim's submissions in that regard, I note that there is no evidence before me which shows that the performance of a radar interference test of the interior of a motor vehicle, when the sensitivity for the radar device is set at its maximum level, would likely distort or skew the results of the test. The representative's argument that the results of the interior interference test conducted by the officer at the relevant time are unreliable given the allegedly improper testing procedures employed, is a proposition which is not supported by the evidence and is, in my view, based solely on speculation.

[52] After considering Officer Prevost's testimony in totality, I find that I am not left in a state of reasonable doubt as to the fact that he was, as of February 22, 2009, trained and qualified in the operation of the "Genesis VP Directional" radar device, the fact that the device was tested before and after its use in accordance with manufacturer's instructions and the fact that on both occasions the device was found to be in good working order.

[53] In light of my finding in this regard, I am able to take judicial notice of the accuracy and reliability of the evidence of the speed of the subject pick-up truck, determined by the said radar device. Accordingly, I find that the “locked-in” speed measurement for the subject vehicle of 75 kilometres per hour constitutes *prima facie* evidence of the rate of the speed of the motor vehicle driven by the defendant at the material time.

[54] As there is no evidence before me which contradicts the evidence proffered by the prosecution in this proceeding, I therefore find that the prosecution has proven, to the standard of proof beyond a reasonable doubt, that on February 22nd, 2009, at 2:05 a.m., the defendant was driving a pick-up truck on Speers Road, in the Town of Oakville at a rate of speed of 75 kilometres per hour in a posted 60 kilometre per hour speed zone.

THE DECISION

[55] The prosecution has proven all of the elements of the *actus reus* of the subject offence, as well as the issue of identification of the defendant, beyond a reasonable doubt.

[56] The defendant, Pietro Dattomo, is therefore found guilty of the offence of “speeding-70 kilometres per hour in a 60 kilometre per hour zone, contrary to section 128 of the *Highway Traffic Act*, as charged, and a conviction is registered.

Released: October 30, 2009

Signed: “Justice of the Peace Kenneth W. Dechert”